court says, "the joint tenant who survives does not take the moiety of the other from him or as his successor, but by right under the devise or conveyance by which the joint tenancy was created in the first instance." Thus, the right of the survivor is not subject to the inheritance tax, unless specially included by statute.[11]

The court is clearly correct, therefore, in holding the case to be within the literal terms of the rule of Hibberd v. Smith. The decision, however, comes as a shock to the California lawyer; for in practically every case following the doctrine of Bury v. Young, it is announced that upon the delivery to the escrow-holder title vests in the grantee immediately and completely — terms which are exclusive of the principle that acceptance by the grantee is a condition precedent to the actual passage of title. But since the effect of the grantee's knowledge or ignorance of the deed was never put in issue — the circumstance being scarcely ever alluded to in the statement of facts, and never commented on — these statements must be considered dicta, and cannot be raised in objection to the decision in the principal case.

The question remains, however, whether the principal case is within the reason, as well as the literal terms, of the rule of Hibberd v. Smith. It is well enough not to employ a fiction to the prejudice of one who has a pressing claim to protection; but is a surviving joint tenant so situated? Joint tenancy is a peculiar institution, of little present-day value. Very generally, the whole institution, or the incident of survivorship, has been abolished by statute.[12] Nor is it necessary that title should pass to work a severance, even where joint tenancy obtains unmodified; thus, a mere contract to convey is enough.[13] For these reasons, the court might have made an exception to the rule of Hibberd v. Smith, had it desired. It would seem legitimate to take advantage of any available fiction, to restrict the operation of this medieval remnant.

H. R.

JUDGMENTS: LIEN OF FEDERAL JUDGMENT: TERRITORIAL EXTENT—Holding that the judgment of a federal court is at once a lien on the realty of a judgment debtor throughout the entire district though unrecorded in any county therein, *Liniker v. Dillon*[1] must necessarily come as a distinct shock to all who have relied exclusively on county records.[2]

The efficacy of the federal judgment as a lien is attributable

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[11] Gleason & Otis, Inheritance Taxation (2d ed.) 197 ff.

[12] 7 R. C. L. 813; 1 Tiffany Real Property, 633.

[13] Brown v. Raindle (1796) 3 Ves. Jun. 256, 30 Eng. Rep. R. 998; In re Hewett (1894) 1 Ch. D. 362.

[1] San Francisco Recorder, August 15, 1921. (Fed. N. D. Cal. Van Fleet, J.)

[2] See Rock Island Natl. Bank v. Thompson (1898) 173 Ill. 593, 50 N. E. 1089, where a mortgagee relying exclusively on county records was subordinated to a previously obtained federal judgment not of record in the county.

to congressional legislation.[3] While it is clear from such legislation that the intention of Congress has always been to prevent a creditor suing in a federal court from obtaining any advantage over a suitor in a state court,[4] the federal courts have been anything but remiss in preventing the existence of the converse situation. Hence, the same difference exemplified in the instant case as to the territorial effect of the respective judgments of state and federal courts is found to have been common throughout the nation prior to 1888.[5]

At that time, however, Congress, out of solicitude for "citizens unaware of the existence of liens from federal judgments not of local record," enacted that they should operate as liens throughout the state only in the same manner as judgments of the state courts.[6]

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[3] ". . . . the lien of Federal judgments depends upon the acts of Congress . . . ." Cooke v. Avery (1892) 147 U. S. 387, 37 L. Ed. 209, setting forth the exact statutory source. "It is within the constitutional power of Congress to make judgments in the federal courts liens on the debtor's property, and to fix the territorial extent and duration of such liens, independently of state laws." Dartmouth Sav. Bank v. Bates (1890) 44 Fed. 546; see also Freeman on Judgments, Vol. II, §§ 403-404; Black on Judgments, Vol. I, § 414; and for a detailed note on the whole subject 47 L. R. A. 469.

[4] "Congress in adopting the modes of process prevailing in the states at the time the judicial system of the United States was organized made judgments recoverable in the federal courts liens in all cases where they were so by the laws of the state, and a later act of Congress has provided that judgments shall cease to have that operation in the same manner and at the same periods in the respective federal districts as like processes do when issued from the state courts." Baker v. Mattan (1870) 79 U. S. (12 Wall.) 150, 20 L. Ed. 262; "In this, as in all matters relating to the practise and proceedings for obtaining and enforcing judgments in the federal courts, it has always been the policy of Congress to conform the processes in the federal courts to those in the state courts." Dartmouth Sav. Bank v. Bates, supra, n. 3.

[5] Metcalf v. Watertown (1894) 153 U. S. 671-676, 38 L. Ed. 861; Seventeenth Street Landing Co. v. Husted (1919) 160 Atl. 540 (Pa.); Conrad v. Atlantic Ins. Co. (1828) 26 U. S. (1 Pet.) 453, 7 L. Ed. 189; Shrew v. Jones (1840) 2 McLean 78, Fed. Cas. No. 12,818; Crospey v. Crandal (1851) 2 Blatchf. 341, Fed. Cas. No. 3,418; Carrol v. Watkins (1870) 1 Abb. U. S. 474, Fed. Cas. No. 2,457; Lombard v. Bayard (1848) 1 Wall. Jr. 196, Fed. Cas. No. 8,469; Barth v. McKeener (1868) 4 Biss. 206, Fed. Cas. No. 1,069; Byers v. Fowler (1851) 12 Ark. 218, 54 Am. Dec. 271; Trapnall v. Richardson (1853) 13 Ark. 543, 58 Am. Dec. 338; U. S. v. Duncan (1850) 12 Ill. 523, Fed. Cas. No. 15,003; Seller's Lessees v. Corwin (1832) 5 Ohio 398, 24 Am. Dec. 301; Rock Island Natl. Bank v. Thompson, supra, n. 2.

"In those states where the judgment or execution of the state court creates a lien only in the county in which the judgment is rendered, it has not been doubted that a similar proceeding in the Circuit Court of the United States would create a lien to the extent of its jurisdiction. . . . Any other position would materially affect, and in some degree subvert the judicial power of the union. It would place suitors of the state court in a much better position than in federal courts." Massingill v. Downs (1849) 48 U. S. (7 How.) 760, 12 L. Ed. 903. The suitor in the state court would be in such superior position by virtue of the fact that as a rule the states made provision for extending the lien of the judgments of the state courts by filing an abstract of the same in any other county, but made no such provision with reference to the judgments of the United States courts; which provisions Congress was powerless to make. Dartmouth Savings Bank v. Bates, supra, n. 3.

[6] Act of Aug. 1, 1888, Chapter 729, §§ 1, 2; 25 Stat. at L. 357, 4 Fed. St. Ann. 5; Barnes Fed. Code 312.

A proviso, though, declared in legal effect that this should be true only when the laws of a state provide for docketing federal judgments in the same manner as judgments of its own courts might be docketed.[7]

It was for the purpose of meeting the requirements of this proviso that section 671a of the California Code of Civil Procedure was intended. It will be seen at a glance, however, why in the eyes of the court in the instant case, "it has failed so signally." For while judgments of our state courts operate as liens in the county of rendition instanter upon being docketed by the clerk, no act being required of the judgment creditor,[8] before a federal judgment may have a like effect the aforementioned Code section dictates the following procedure: A transcript of the judgment must first be filed and recorded with the county clerk, then filed with the county recorder and by him finally indexed and recorded. Again, while section 671a requires the same procedure of a federal judgment creditor in every county where he wishes the lien to attach, the much simpler condition of merely recording a transcript of the original docket with the county recorder is required of the creditor armed with a judgment of a state court.[9]

While to some the above differences may seem insignificant, and the position of the court in the principal case perhaps somewhat strained, we need but remember the extreme significance that a very few minutes may have in the competition of rival liens for priority, and remain silent as to the difference in resulting expense, to appreciate the position of the court as justified. The full protection of third persons, aimed at by the legislature in section 671a, is yet within its easy reach by an obliteration of these purposeless discrepancies.

M. F.

MORTGAGE: SUIT ON NOTE IN FOREIGN JURISDICTION AS PRECLUDING FORECLOSURE IN CALIFORNIA—It was very early decided that the payee of a note secured by a mortgage of property in this state waives his right to foreclose by reducing the note to judgment in a foreign jurisdiction, the foreclosure being deemed that second action prohibited by section 726 of the Code of Civil Procedure.[1] In *Brice v. Walker*,[2] we find that holding reiterated

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[7] Supra, n. 5.

[8] Cal. Code Civ. Proc. § 671.

[9] Cal. Code Civ. Proc. § 674.

[1] Ould v. Stoddard (1880) 54 Cal. 613. The pertinent portion of Cal. Code Civ. Proc. § 726 is, "There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real or personal property, which action must be in accordance with the provisions of this chapter." The remainder of the section is occupied with the details of the foreclosure proceeding.

[2] (Nov. 19, 1920) 33 Cal. App. Dec. 561, 194 Pac. 721.